holding from courts-martial all authority to try officers or soldiers for crimes prescribed by the civil power, leaving the civil tribunals to try such offenses, or by investing courts-martial with exclusive jurisdiction to try such officers and soldiers for all crimes, not capital.

In support of the view that the judgment of a military court against an officer or soldier of the Army for acts constituting a crime against both the civil law and the military organization, is no bar to a second trial in the civil courts for the same acts, we are referred to *Fox* v. *Ohio*, 5 *How.* 410, 435; *United States* v. *Marigold*, 9 *How.* 560, and *Moore* v. *State of Illinois*, 14 *How.* 13, 19, 20. Nothing said or determined in either of those cases conflicts with the decision in this case. In the above cases, especially in *Moore's case*, the question was mooted whether the same acts could be treated as crimes both against the United States and a State. It was there suggested that a person could not be punished by two governments on account of or for the same act constituting crime, without violating the Fifth Amendment. But this court, speaking by Mr. Justice Grier, said: "An offence, in its legal signification, means the transgression of a law. A man may be compelled to make reparation in damages to the injured party, and be liable also to punishment for a breach of the public peace, in consequence of the same act; and may be said, in common parlance, to be twice punished for the same offence. Every citizen of the United States is also a citizen of a State or territory. He may be said to owe allegiance to two sovereigns, and may be liable to punishment for an infraction of the laws of either. The same act may be an offence or transgression of the laws of both. Thus, an assault upon the marshal of the United States, and hindering him in the execution of legal process, is a high offence against the United States, for which the perpetrator is liable to punishment; and the same act may be also a gross breach of the peace of the State, a riot, assault, or a murder, and subject the same person to a punishment, under the State laws, for a misdemeanor or felony. That either or both may (if they see fit) punish such an offender, cannot be doubted. Yet it cannot be truly averred that the offender has been twice punished for the same offence; but only that by one act he has committed two offences, for each of which he is justly punishable. He could not plead the punishment by one in bar to a conviction by the other; consequently, this court has decided, in the case of *Fox* v. *The State of Ohio*, (5 How. 432,) that a State may punish the offence of uttering or passing false coin, as a cheat or fraud practiced on its citizens; and, in the case of the *United States* v. *Marigold*, (9 How. 560,) that Congress, in the proper exercise of its authority, may punish the same act as an offence against the United States."

It is clear that the cases above cited are not in point here. The Government of the United States and the governments of the several States in the

exercise of their respective powers move on different lines. The Government of the United States has no power, except such as expressly or by necessary implication has been granted to it, while the several States may exert such powers as are not inconsistent with the Constitution of the United States nor with a republican form of government and which have not been surrendered by them to the General Government. An offense against the United States can only be punished under its authority and in the tribunals created by its laws; whereas, an offense against a State can be punished only by its authority and in its tribunals. The same act, as held in *Moore's* case, may constitute two offenses, one against the United States and the other against a State. But these things cannot be predicated of the relations between the United States and the Philippines. The Government of a State does not derive its powers from the United States, while the Government of the Philippines owes its existence wholly to the United States, and its judicial tribunals exert all their powers by authority of the United States. The jurisdiction and authority of the United States over that Territory and its inhabitants, for all legitimate purposes of government, is paramount. So that the cases holding that the same acts committed in a State of the Union may constitute an offense against the United States and also a distinct offense against the State, do not apply here, where the two tribunals that tried the accused exert all their powers under and by authority of the same Government—that of the United States.

It may be difficult at times to determine whether the offense for which an officer or soldier is being tried is, in every substantial respect, the same offense for which he had been previously tried. We will not therefore attempt to formulate any rule by which every conceivable case must be solved. But passing by all other questions discussed by counsel or which might arise on the record, and restricting our decision to the above question of double jeopardy, we adjudge that, consistently with the above act of 1902 and for the reasons stated, the plaintiff in error, a soldier in the Army, having been acquitted of the crime of homicide, alleged to have been committed by him in the Philippines, by a military court of competent jurisdiction, proceeding under the authority of the United States, could not be subsequently tried for the same offense in a civil court exercising authority in that Territory. This is sufficient to dispose of the present case.

The judgment must be reversed, and the case remanded with directions to the Supreme Court of the Philippines to order the complaint or information in the Court of First Instance to be dismissed and the plaintiff discharged from custody.

It is so ordered.